IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1034 OF 2005

Bharatkumar Modi & Ors ...Applicants

Versus

State of Maharashtra & Anr ...Respondents

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Mr. A.Y. Sakhare, Sr. Advocate i/b A.H.H. Ponda, for Applicants.

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JULY, 2005

P. C.:-

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have prayed for quashing of process issued against them in Criminal Case No.1607/S/2002 which is pending in the Court of learned Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai. In the said case, process has been issued against the applicants under Section 138 of Negotiable Instruments Act. The applicants had preferred an application for recall of proces before the learned Magistrate. The said application came to be rejected by the learned Magistrate in view of the

decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. reported in 2004 (4) Mh.L.J. 274.** In view of the said decision, it is clear that the Magistrate does not have power to recall the process, hence, in such case no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process.

3. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicants to prefer revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today.

5. It is also prayed that by order dated 09.06.2005,

the learned Magistrate has issued non bailable warrant against the applicants and the said N.B.W. be quashed. I am not inclined to quash the N.B.W. as in my view, it would be appropriate that the applicants prefer an application before the Magistrate for setting aside the said N.B.W. In order to enable the applicants to take necessary steps for setting aside the N.B.W. before the Magistrate, the said N.B.W. are stayed for a period of five weeks from today.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision would be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of Magistrate rejecting the application for recalling of process.

7. Application is disposed of.

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